IN THE HIGH COURT OF SINDH, KARACHI

Special Criminal Anti-Terrorism Appeal No. 125 of 2020

Before:
Mr. Justice Mohammad Karim Khan Agha
Mr. Justice Khadim Hussain Tunio

Appellant:	Muhammad Bin Shahzad and Rehan Ahmed through Mr. Muhammad Nazeer Tanoli, advocate.
Respondent:	The State through Mr. Abrar Ali Khichchi, Additional Prosecutor General.
Date of hearing:	01.03.2022
Date of announcement:	08.03.2022

J U D G M E N T

KHADIM HUSSAIN TUNIO, J- Through captioned special criminal anti-terrorism appeal, appellants Muhammad Bin Shahzad son of Shahzad Ahmed and Rehan Ahmed son of Riaz Ahmed have challenged the judgment dated 21.08.2020 *(impugned judgment)* passed by the learned Judge, Anti-Terrorism Court-XII, Karachi in Special Case No. 105/2020 *(Re: State v. Muhammad Biz Shahzad and others)*, culminated from FIR No. 234/2019 registered at P.S. CTD, under section 11-H, 11-N, 11-F(i) and (ii) of the Anti-Terrorism Act 1997 *(ATA 1997)*. Through the impugned judgment, appellants were convicted u/s 11-F(1) of the ATA 1997 and sentenced them to suffer rigorous imprisonment for six months with a fine of Rs.10,000/- each (ten thousand only), in default whereof to suffer further imprisonment for four months. The appellants were also convicted u/s 11-F(5) and sentenced to suffer rigorous imprisonment for five years and a fine of Rs.20,000/- each (twenty thousand only), in default whereof to suffer further imprisonment for four months more. Both the appellants were lastly convicted u/s 11-H(1)(2) and sentenced to suffer rigorous imprisonment for ten years with a fine of Rs.50,000/- each (fifty thousand

only), in default whereof to suffer further imprisonment for six months more. Benefit of Section 382-B Cr.P.C. was extended to them.

2. Brief facts of the prosecution case are that on 21.12.2019, the complainant ASI Muhammad Aslam received orders from the Deputy Commissioner, Karachi West to investigate and seize Jamia Masjid Al-Fateh *(Al Falah)*, Sector 5-D, Mayamarabad, Surjani Town which according to I.R No. Addl/IGP/CTD/IR/No.4073 dated 30.07.2019 was being used as a front for a banned organization by the name of Jaish-e-Muhammad and the people running the said organization used the building to admit children who they "educated" in the Madaressah, but instead spread misinformation and brainwashed them. The organization also raised funds and received donations to provide to the terrorists of the banned organization. When the property was sealed, both the appellants who used to allegedly collect funds for Jaish-e-Muhammad absconded away as such FIRs were lodged on the same day. The appellants were then apprehended and on 19.07.2020, they agreed to lead the police to their houses where they had stored funding registers. The appellant Muhammad Bin Shahzad led the police to his house, wherefrom inside a brown cabinet *(Almari)*, the police recovered a blue shopper containing three passports, a driver's license issued by Saudi authorities, three funding books and several literature books. Then, the police proceeded to appellant Rehan's house wherefrom inside a similar cabinet *(Almari)* in his room, the police recovered three funding registers, cash amount of Rs.1300/- and a coloured copy of the appellant Rehan's CNIC. The properties recovered were sealed on the spot and the appellants along with the recovered case properties were brought back to the police station.

3. After usual investigation, a challan was submitted against the appellants, whereafter a formal charge was framed against them by the trial Court to which they pleaded not guilty and claimed trial. In order to substantiate its case, prosecution examined in all four witnesses namely PW-1 **ASI Muhammad Aslam**, PW-2 **ASI Khan Muhammad**, PW-3 **Muhammad Khawar** and PW-4 **Investigating Officer Tarique Qayoom**.

Prosecution witnesses also produced a number of documents and other items in evidence which were duly exhibited. Statement of accused were recorded under section 342 Cr.P.C. wherein they denied the allegations made against them and claimed false implication. Both the appellants examined themselves on oath under section 340(2) Cr.P.C. in disproof of the charge. Appellant Muhammad Bin Shahzad also examined a defence witness namely DW-1 **Shahzad Ahmed**, his father, in his defence.

4. Learned trial Court, after considering the material available before it and hearing the learned counsel for the respective parties handed down the impugned judgment and sentenced the appellants as stated supra.

5. Learned counsel for the appellants has argued that none of the prosecution witnesses deposed that the appellants belonged to a banned organization nor has any documentary evidence been produced in that regard; that there is no evidence available on the record to suggest that the appellants collected funds *(chanda)* and used the same to arm terrorists belonging to the banned organization; that the only independent witness examined by the prosecution was PW-3 Muhammad Khawar while PC Rashid was given up; that the houses from where the recoveries were effected were not in exclusive possession of the appellants; that the appellants have no concern with the banned organization; that even the books so recovered by the prosecution from the appellants were foisted upon them to strengthen the prosecution case; that it is a fact that at the time of recovery, the doors to the cabinets were already open; that the appellants were falsely implicated by the CTD to show their efficiency, as such he prays for the acquittal of the appellants.

6. Conversely, learned Additional Prosecutor General supported the impugned judgment while submitting that no enmity whatsoever has been alleged or proved by the appellants against the CTD officials; that the PW-2 and PW-3 have consistently deposed against the appellants; that no major contradictions exist in the evidence of the prosecution witnesses; that the appellants disclosed their association with the banned

organization during interrogation when they also disclosed about the existence of funding books. In support of his contentions, he has relied on the case law reported as ***Muhammad Din v. The State*** **(1985 SCMR 1046)**, ***Mir Muhammad v. The State*** **(1995 SCMR 614)**, ***Sh. Muhammad Amjad v. The State*** **(PLD 2003 SC 704)** and ***Nazir Shehzad and another v. The State*** **(2009 SCMR 1440)**.

7. We have heard the arguments advanced by the learned counsel for the appellants as well as learned Additional Prosecutor General and have gone through the entire evidence available on record with their assistance.

8. The prosecution case stems from an order received by the complainant of the case, ASI Muhammad Aslam, who was directed to secure Jamia Masjid Al-Fateh *(Al Falah)*, Sector 5-D, Mayamarabad, Surjani Town. This mosque, according to Inquiry Report No. Addl/IGP/CTD/IR/No.4073 dated 30.07.2019 was used as the legal front of the proscribed organization by the name of Jaish-e-Muhammad. The property was secured and Head Master Muhammad Arshad was appointed for its oversight. The complainant then lodged the FIR against unknown accused associated with the proscribed organization Jaish-e-Muhammad as is evident from Ex. 11-A. On 24.12.2019, the complainant and PW-2 ASI Khan Muhammad along with PC Hanif Korejo accompanied the IO, PW-4 Tarique Qayoom, and inspected the mosque whereafter they left. However, as per the depositions of the complainant, they did not enter the said mosque. Then, on 08.03.2020, IO called PW-2 again to accompany him to the mosque to record statements of the people of the vicinity which they did. The investigation officer called four people that worked at the mosque; PW-3 Muhammad Khawar who was the Nazim of the mosque, Mufti Zahid-ur-Rehman who was the Imam of the mosque, Sajid who was the Moazzan and Abdul Aziz who was the Naib Moazzan. These people disclosed the names of the present appellants for the first time while disclosing that the mosque was ran by Al-Rehmat Trust of Jaish-e-Muhammad which was headed by an individual by the

name of Bashir whereas the present two appellants assisted him by collecting funds and raising banners of Jaish-e-Muhammad. One of those four people was examined by the prosecution being PW-3 Muhammad Khawar, the Nazim. In his examination-in-chief, his stance remained the same as was disclosed to the investigating officer, however in his cross-examination, he not only supported the defence case, but also deposed that he was under fear of the investigation officer who had threatened him to depose falsely and kept him in holding at the CTD Center at Sheraton Hotel from 07.03.2020 to 08.03.2020 when the investigating officer visited the mosque and called over four persons including PW-3 to give their statements. He also deposed that he had not given any names to the I.O of the case and instead the I.O himself had incorporated the names of the two individuals. While professing the appellants' innocence, he deposed that *"It is correct to suggest that Rehan Ahmed and Muhammad Bin Shahzad are not the members of Al-Rehmat Trust/Jaish-e-Muhammad and that they are innocent persons being Namazis. I have never seen them while collecting Chanda for Al-Rehmat Trust/Jaish-e-Muhammad."* These depositions strike at the core of the prosecution case, essentially the only witness or the "star witness" of the prosecution's case falsified its story while claiming that he was put under pressure by the investigation officer to depose against the appellants. Besides him, all other witnesses are police officials whose evidence and documents so brought on record by them have been perused and considered by us with due care. The depositions of PW-1 ASI Muhammad Aslam who is also the complainant of the case appear to be rather formal in nature and nowhere state the names of the appellants nor did he ever implicate them through his statement. PW-2 ASI Khan Muhammad on the other hand had accompanied the investigating officer (PW-4) for recording statements of people from the mosque, one of whom was PW-3 as already observed. ASI Khan Muhammad's statements also appear to be rather formal who could only name the appellants as they were introduced to him by the investigating officer on 09.03.2020. He admitted that while inspecting the mosque, they had not entered the same to examine the surroundings, to ascertain whether the information

received was even correct or not and whether a Madaressa was available inside. He also admitted that when he had initially visited the mosque on 24.12.2019, the investigating officer had not called any of the people of the vicinity which he later on miraculously arranged on 09.03.2020, almost after 3 months of the initial visit. He also admitted that Mufti Zahid Rehman and Muhammad Sajid did not implicate the present appellants in their 161 Cr.P.C statements. Moreover, regarding the recovery, he deposed that the cabinets from where the case property was recovered, in both houses were not only similar looking with three doors each, but they were also unlocked. The mere fact that the cabinets were unlocked is rather unappealing to a prudent mind. If the appellants were members of a proscribed organization, why would they leave their cabinets, containing information regarding their involvement with the said proscribed/banned organization, open while knowing full well that if caught by any visitor, they would get in legal trouble? Coming to the deposition of the investigating officer, it is rather surprising to note how poorly the investigation was conducted. The investigating officer not only failed to ascertain whether the visas issued to appellant Muhammad Bin Shahzad were for the purpose of any personal matters or to invest and bolster Anti-Pakistan agenda in the other countries. He failed, miserably, to record the statements of PW-3 Muhammad Khawar and Abdul Aziz on his initial visit at the mosque despite admitting that they were present on the said day. It is also astonishing to note that he happened to record their statements on the one day when they favoured his investigation by disclosing the names of the appellants. The assumption here would generally be that he intentionally did not record 161 Cr.P.C statements of these witnesses on earlier dates so that he could later coerce them under fear of his power and make them depose in a way that would favour his investigation, as was deposed by PW-3 Muhammad Khawar before the trial Court. He even failed to read the contents of the books that he had recovered from the appellants to ascertain whether the same contained proscribed content that promoted terrorism or whether the same were simple religious books. To ascertain whether the appellants collected any

funds and whether the information in the funding books was true or not, he did not even collect the bank records nor the mobile financing application; EasyPaisa's transaction records which the appellants allegedly used to fund terrorist activities of their organization. Needless to say that investigating officer was duty bound to collect all relevant evidence pertaining to allegation of crime and to dig out the truth enabling and facilitating the Court to administer justice, however, it appears that investigating officer has failed to discharge his duties in the manner as provided under the law. The whole prosecution case is also placed in doubt by DW-1 Shahzad, the father of appellant Muhammad Bin Shahzad who deposed that he had voluntarily handed over three passports to the police out of which two were returned and one belonging to the appellant Muhammad Bin Shahzad was taken by the police. He also deposed that the police officials had recovered nothing from the house and had left empty-handed only with the passport. The investigating officer also failed to collect phone records of the appellants which could have possibly shown any leads or connections with known activists of the proscribed organization Jaish-e-Muhammad. Prosecution also could not explain as to why it failed to examine Abdul Aziz who had allegedly disclosed the name of the appellants in his S. 161 Cr.P.C statement. The presumption here would be that had he been examined like PW-3, he would not have implicated the appellants.

9. This Court is left shocked to note that the trial Court, despite noting the glaring inconsistencies in the prosecution case, proceeded to convict the appellants and sentence them for the maximum term as prescribed by the ATA 1997 on the basis of a prosecution case that hinged on doubtful recovery of funding registers, contents whereof were not even sent to the handwriting expert to ascertain if the same even belonged to the appellants or not. Therefore, we are left with no doubt in our mind that the prosecution has miserably failed to establish any connection between the appellants and Jaish-e-Muhammad. Under similar circumstances and facing similar charges, many other accused were acquitted in the cases of ***Qari Ahmad Yousaf v. The State*** **(2016 P.Cr.L.J**

662), ***Abdul Jabbar v. The State and another*** **(2020 P.Cr.L.J N 156)**, ***Abdul Haseeb Yousaf v. The State*** **(2020 MLD 817)** and ***Shahmeer v. The State and others*** **(2020 P.Cr.L.J 1215)**. The learned trial Court lost sight of the golden principle of benefit of doubt while holding grave illegalities in the due process of law to be "mere technicalities" which it held could be ignored. In the recent case of ***Naveed Asghar and 2 others v. The State*** **(PLD 2021 SC 600)**, the Hon'ble Supreme Court has observed that even the gravity or seriousness of an offence must not influence the mind of a trial Judge who is to otherwise assess the probative value of the evidence brought forth by the prosecution, while further noting that:-

> "35. Before parting with the judgment, we feel constrained to observe though at the cost of some repetition but for the sake of clarity that in a criminal trial ***an accused person cannot be convicted on the basis of mere "suspicion" or "probability" unless and until the charge against him is "proved beyond reasonable doubt", a standard of proof required in criminal cases in almost all common law jurisdictions***. An accused person cannot be deprived of his constitutional right[38] to be dealt with in accordance with law, merely because he is alleged to have committed a gruesome and heinous offence. The zeal to punish an offender even in derogation or violation of the law would blur the distinction between arbitrary decisions and lawful judgments. No doubt, duty of the courts is to administer justice; but this duty is to be performed in accordance with the law and not otherwise. ***The mandatory requirements of law cannot be ignored by labelling them as technicalities in pursuit of the subjective administration of justice***. One guilty person should not be taken to task at the sacrifice of the very basis of a democratic and civilised society, i.e., the rule of law."

(emphasis supplied)

10. For what has been discussed above, we find that the prosecution has miserably failed to bring home the guilt of the appellants beyond reasonable shadow of doubt. Resultantly, convictions and sentences awarded to the appellants, vide impugned judgment, are set aside while giving them benefit of doubt and, as such, instant special criminal anti-terrorism appeal is allowed. The appellants be released forthwith if not required in any other custody case.

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